

**IN RE ARBITRATION BETWEEN:**

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**IOWA CITY, IOWA**

**and**

**POLICE LABOR ORGANIZATION OF IOWA CITY**

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**DECISION AND AWARD OF ARBITRATOR**

**IOWA PERB CEO #338 SECTOR 2**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**February 15, 2011**

IN RE ARBITRATION BETWEEN:

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Iowa City, IA,

and

DECISION AND AWARD OF ARBITRATOR  
Iowa PERB Case # CEO #338 Sector 2

Police Officers Labor Organization of Iowa City.

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**APPEARANCES:**

**FOR THE ASSOCIATION:**

Joe Day, Day, Rettig & Peiffer

**FOR THE CITY:**

Steve Rynecki, City Attorney

**PRELIMINARY STATEMENT**

The hearing in the matter was held on February 8, 2011 at the Civic Center Building 410 E. Washington St. Iowa City, IA. The parties presented evidence at which point the hearing record was closed. The parties also submitted post-hearing written letter briefs dated February 11, 2011

**ISSUE PRESENTED**

The parties stipulated to the issue at impasse as follows: Health Insurance – Article XVIII – single person premium contribution and single person deductible.

**STATUTORY AUTHORITY**

The arbitrator was selected by the parties pursuant to Iowa Code 20.22 Subd 2(b). There were no procedural issues raised and all necessary filings with PERB were completed in a timely fashion.

Iowa Code Section 20.22 (3) requires that the arbitrator select the parties' final offer on each impasse item as follows:

3. The submission of the impasse items to the arbitrators shall be limited to those issues that had been considered by the fact-finder and upon which the parties have not reached agreement. With respect to each such item, the arbitration board award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board or to the recommendation of the fact-finder on each impasse item.

Section 20.22 (9) sets forth the factors to be considered in rendering an award as follows:

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

As will be discussed below, each of these factors was considered in rendering the award herein.

## **PARTIES' POSITIONS**

### **UNION'S POSITION:**

The Union's final position was for an increase in the deductible to \$25.00 per month and for a premium contribution of \$200.00. In support of this the Union made the following contentions:

1. The Union cited several comparable jurisdictions from around the State of Iowa and noted that Iowa City's single person deductible was above average. These jurisdictions were as follows: Ames, Cedar Falls, Cedar Rapids, (both the Traditional and Choice plans), Council Bluffs, Davenport, Des Moines (both their Choice and Access plans), Dubuque, Sioux City and Waterloo.

2. The Union further pointed to these jurisdictions and noted that the single person contribution toward health coverage averaged \$25.57 whereas Iowa City's is currently \$20.00. The City's proposal to raise the contribution to \$40.00 would take Iowa City far above the average and that there was no justification for doing so. The Union's proposal would increase the contribution to \$25.00, which is more in keeping with the average of the comparable cities throughout Iowa.

3. The Union further argued that the City's proposed increase to \$40.00 makes the Union's rate disproportionate to other rates under the City's Health Insurance policy. The Union countered the City's claim that it wants the \$40.00 contribution to be equal to all other units within the City and asserted that the figures do not support that assertion by the City. The Union pointed to the actual cost and noted that since there are 68 single people in the bargaining unit of 90 people.

4. The Union argued that the deductible amount for those 68 people multiplied by the difference between the Union's final offer and the City's final offer is only approximately \$10,020.00. The actuarial cost would be much less<sup>1</sup>. The true actuarial cost would be blended into the total Plan and, since there are some 500 people in that Plan, the effect would be de minimus. The City is merely attempting to force this unit to do what the other units have done when the true impact of the proposal would be minor at best.

5. The Union asserted in its Brief that the true wage increase was not 2.85% as the City claimed but was rather only somewhat less than 2% since the 1.55 step increase is only for the last 6 months of the contract. The Union asserted that the City's attempt to argue that the wage increase, that the City characterized as "generous," was not. The Union argued that the wage increase did not cover anywhere near as much of the increase in health cost as the City claimed.

6. With regard to the deductible amounts the Union pointed to Union Exhibit 6 and noted that the average of the comparable jurisdictions, as noted above, was \$194.44. Currently the deductible is \$200.00, which is of course already above that average. Increasing that to \$350.00 would take Iowa City well above any justifiable norms around the State and would place it at 3rd from the top, behind only Waterloo and Cedar Falls, in terms of the deductible amount. The Union argued that there was no economic need for this increase and that the mere fact that other jurisdictions within the City have agreed to this is no basis to force this on the members of this bargaining unit. A good faith negotiation requires that there be something more than a take it or leave it negotiation or mere reliance on what other units, including the non-Union employees, have agreed to.

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<sup>1</sup> The Union offered no evidence as to how much that would be.

7. The Union further asserted that the City's reliance on CPI – Urban index figure is misplaced. The better measure is a more specific index relating to the actual cost of living in Iowa City and Johnson, see Union exhibit 2. That shows a monthly actual cost of approximately \$4,940.00 per month. The City's exhibit on the CPI is an amalgam of various places around the country that have little relation to the actual costs in Iowa City.

8. The Union also argued that the City has provided no justification for the need to increase the cost of the plan to the employees. They have not bid this out or undertaken any due diligence to see if in fact there is a provider in the marketplace that would provide the same coverage at a lower cost. The City should not be allowed to benefit from this failure. The Union argued that the equities of this situation and the City's failure to bid this out to see if indeed the same coverage could be provided at a lower cost dictate in the Union's favor

9. The Union also argued that the City's claim that it "needs uniformity" throughout different categories of employees with regard to health insurance is a red herring. The Plan is the same, the coverage is the same and simply having different contribution and deductible amounts does not "balkanize" the Plan in the way the City asserted. It would be a relatively easy matter to administer and would not create disharmony among other employee groups because police units are always viewed differently not only because of the nature of their work but also because of the 24/7 nature of their operation. The Union argued that the City has provided no compelling need for these changes and no quid pro quo for them.

The Union seeks an award of the arbitrator awarding its final impasse position herein

## **CITY'S POSITION**

The City's final impasse position was for an increase in premium contribution to \$40.00 per month and for an increase in deductible to \$350.00. In support of this position the District made the following contentions:

1. Initially the City asserted that the arbitrator has no jurisdiction to consider the Union's position as it involved retrograde bargaining. The City pointed to the Union's initial proposal and compared that to its final offer and noted that the Union has gone backwards. The City pointed to PERB Subrule 621-7.5(4) (A) and asserted that it prohibits final offers at arbitration which have not been presented in the "course of bargaining." Here the Union's initial offer was for an increase of \$5 per month single plan premium contribution and \$150 increase in deductible payment in the exchange of final offers for arbitration. Comparing that to its final offer in arbitration, one can readily see that the Union has engaged in bad faith bargaining in violation of IPERA.

2. Further, the first time the City saw the Union's offer was mere days before the arbitration hearing. Whether this was due to the change of legal representatives or not, the Union cannot now be allowed to present an offer which is actually worse than its initial offers in negotiations.

3. The City cited *City of Cedar Rapids*, PERB Case No. 5679; PERB held that a Union violates the Act "...by presenting a final offer for arbitration which had not been offered to the City in the course of negotiations ..." Slip op at p.15. The purpose of bargaining is to encourage voluntary settlements and compromise and not allow a party to go backwards while posturing for arbitration. The City asserted that this is exactly what the Union has done here and that the arbitrator should reject the Union's position out of hand because of the violation of PERB rules.

4. The City asserted that it has been seeking consistency in health insurance for years. Several Fact Finders have noted that internal consistency would form the basis of such an award if the other units agreed to the City's proposals. Arbitrator Dworkin stated that "health insurance is the area where internal parity is more crucial than in any other aspect of wages, hours or employment terms. Accordingly, while the City's proposal is probably justified, I find that it should be withheld from this Bargaining Unit until it is strenuously negotiated and accepted by the other two Unions. Slip op at page 19-20. Arbitrator Duvall Smith made a similar finding, i.e. that she would not impose the City's proposal until the other two had agreed to it.

5. Now that has occurred, See City Exhibits Exhibit 7, and the other two units have in fact agreed to the City's proposed change in deductible and contribution. In support of this the City cited the TA's with the Firefighters and AFSCME bargaining units and the conditions precedent for the admonitions in both the fact-findings awards has occurred. The City argued most vigorously that internal consistency, especially in health insurance, is critical and that to have different contribution rates and deductibles would "balkanize" the program making it difficult to administer and would create disharmony among the employee groups. The City cited arbitrations from other jurisdictions in support of this principle. See, *Douglas County Sheriff's Dept.* Dec. No. 27594 (WERC 8/93) (Arbitrator held that consistency and equity within a City is important to avoid "hard feelings" and negative morale.) See also, *City of Wauwatosa*, Dec. No. 29936-A (WERC 3/2000), Arbitrator found that having different health plans for groups "could be an administrative nightmare."

6. Both the fire group and AFSCME have agreed to this and to allow this unit to hold out and wait until the end to settle rewards obstructionist bargaining. The great weight of authority frowns on this form of bargaining and the City asserted that this unit should not be allowed to make a change at the very end of negotiations to the health insurance plan. To allow otherwise would place a chilling effect on bargaining in the future and again create disharmony among different units.

7. The City further argued that the wage award, which was agreed to at the arbitration, was 2.85% and that this is far above the average wage award in comparable jurisdiction. This equates to some \$0.83 per hour. This is far above the average of the increases granted in the comparable jurisdictions. While the wage increase has already been agreed to it is relevant in looking at the true cost of the health insurance proposal. Accordingly, this generous wage award more than offsets the increase in costs under the City's health insurance proposal.

8. Further, the CPI-Urban index shows that the wage increase is more than generous and that this will amply offset any increase in cost for these employees. The City noted that the increase in premium amortizes out to approximately \$0.12 per hour and that when one takes into account that the cost can be taken from pre-tax dollars it is closer to \$0.09 per hour. Taken as a percentage of the wage increase, the increased cost of the health insurance deductible and contribution is less than 11% of the wage increase these officers are getting.

9. The City asserted that all these factors, internal consistency, the comparison of the wage increases to other jurisdictions and the CPI and the true cost of the increase of the health insurance plan mitigate in favor of an award in favor of the City's proposal in this matter.

The City seeks an award of the arbitrator awarding its final impasse position herein.

### **DISCUSSION**

The City's initial position was that the Union had engaged in bad faith bargaining due to its retrograde positions in negotiations versus what the City claimed it proposed for the arbitration. The arbitrator has no jurisdiction to decide such matters under Iowa law. That appears to be a matter for determination by PERB. For purposes of this matter, I will treat the Union offers as valid and refer the parties to PERB for an appropriate ruling on that issue if the parties see fit to do so following the decision on the merits here.

Turning to the arguments of the parties and the statutory factors at play here it was apparent that the City's arguments on this record had greater merit than did the Union's. First, there was considerable merit to the City's position that internal consistency should drive the health insurance issue. This is especially true in light of the previous fact finding award by Arbitrators Dworkin and Duvall Smith. It was quite clear that Arbitrator Dworkin had some sympathy for the City's position in the matter before him but felt that internal consistency dictated that it not be awarded unless and until the other two units had agreed to it. Clearly that has now occurred and his reasoning supports the City's claims.



Generally, except in very rare cases, health insurance is a benefit that is largely determined by internal consistency. There are so many different economic and historical considerations between jurisdictions that a comparison of health insurance benefits externally is difficult at best and can in fact lead to some very anomalous results. It is generally best to have the same benefit package among employees in a jurisdiction and this case is no exception. On this record, the fact that the other units voluntarily agreed to the City's plan was by far the most significant factor in this decision.

Second, there was some merit to the City's arguments that the wage increase offsets the increased costs to the employees due to the larger deductible and contribution. The parties differed somewhat as to how much but the evidence showed that the wage increases were slightly more than other jurisdictions were granted for the same period. See City exhibit 4. Some cities granted increases of 2.50% while tiers were far lower. The 2.85% increase here was above that average. The Union's points in this regard were well taken and they argued that not all of the wage increase is apparently granted at the same time. There was no evidence on that however so it was not given much probative weight.

Turning now to the required statutory factors, these too support the City's position, although not all were greatly at play here and not all were addressed by the parties through evidence or argument. It is clear that the past collective bargaining contracts between the parties, including the bargaining that led up to such contract, supports the City here. As noted, in discussing the prior findings, it is clear that the history here was that if the City was able to negotiate a plan with the other units this unit would follow. Here that has clearly happened. As other arbitrators have noted, having the same health insurance plan, with the same contributions and deductibles, fosters industrial harmony. To do otherwise frankly, does otherwise and creates administrative headaches and quite possibly disharmony among units.

Further, as noted, the bargaining here showed that this unit “held out” seeking perhaps an edge to gain something better. Sometimes that is a valid strategy in bargaining and can lead to good results on behalf of the membership of that particular unit. It comes with a risk though that other units will agree to something other than what this unit desires and that a precedent of sorts may be established making it far more difficult to negotiate something different or for an arbitrator to award something different absent a clear showing of compelling need or a quid pro quo for the desired benefit.

Next, arbitrators must run a comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. This was a somewhat closer call in that the averages for the contributions and the deductibles in other jurisdictions shows that the City’s proposed increases would place Iowa City much nearer the top of the charts for both the deductible and the contribution than they are now. See Union Exhibits 5 and 6. The figures were based on FY 2011 figures though and there was insufficient evidence on this record to show how those figures have changed for FY 2012. See Union Exhibit entitled Health Insurance Comparables for FY 2011. Without such evidence it is neither possible nor permissible to divine what the health insurance comparables might be for those other jurisdictions.

Finally as many arbitrators have noted, health insurance is uniquely specific to each public employer. It may not be completely accurate to compare the “costs” without also comparing the plan themselves along with a variety of other factors in comparing them. That is why internal consistency is generally the most important factor for such a fringe benefit because of the unique history each such plan may have and how it may have changed over time with differing concessions, bargaining history and negotiated changes in exchange for other things across jurisdictional lines.

The final set of factors at work here are the interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services and the power of the public employer to levy taxes and appropriate funds for the conduct of its operations. There was a paucity of evidence on these final statutory questions. Neither side raised any issue with respect to ability to pay or what impact such adjustments would have on the normal standard of services. Neither was there any evidence on the question of the employer's ability to levy taxes to conduct its operations. On this record these factors could not be considered because they were not addressed by either party.

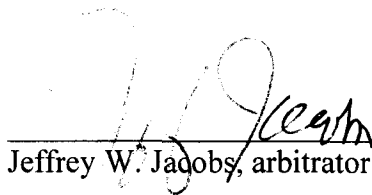
Accordingly the factors that were all mitigated in favor of the City's position in this matter. Under the statute the arbitrator's jurisdiction is limited to selecting one or the other's final position. Here the appropriate decision is to award the City's position.

#### **AWARD**

The CITY'S POSITION is awarded.

Dated: February 15, 2011

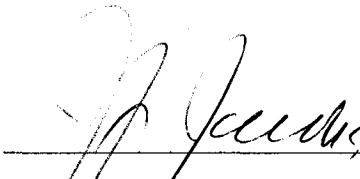
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\_\_\_\_\_  
Jeffrey W. Jacobs, arbitrator

CERTIFICATE OF SERVICE

I certify that on the 15<sup>th</sup> day of February, 20 11, I served the foregoing Award of Arbitrator upon each of the parties to this matter by ( \_\_\_\_\_ personally delivering) ( X mailing) a copy to them at their respective addresses as shown below:

I further certify that on the 15 day of February, 20 11, I will submit this Award for filing by ( \_\_\_\_\_ personally delivering) ( X mailing) it to the Iowa Public Employment Relations Board, 510 East 12<sup>th</sup> Street, Suite 1B, Des Moines, IA 50319.

  
\_\_\_\_\_  
Jeffrey Jacobs, Arbitrator  
(Print Name)